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In re Application of:	:	
BOURLION, Maurice, et al.	:	
U.S. Application No.: 10/589,314	:	DECISION ON PETITION UNDER
PCT No.: PCT/FR2005/000340	:	37 CFR 1.47(a)
International Filing Date: 11 February 2005	:	
Priority Date: 11 February 2004	:	
Atty's Docket No.: BDM-06-1214	:	
For: DEVICE FOR MONITORING THE	:	
PENETRATION OF AN	:	
INSTRUMENT INTO AN	:	
ANATOMICAL STRUCTURE	:	

This decision is issued in response to applicants' "Petition Under 37 CFR 1.47(a)" filed 11 October 2007. Applicants have paid the required petition fee.

BACKGROUND

On 11 February 2005, applicants filed international application PCT/FR2005/000340. The international application claimed a priority date of 11 February 2004, and it designated the United States. On 25 August 2005, the International Bureau (IB) communicated a copy of the international application to the United States Patent and Trademark Office (USPTO). The deadline for submission of the basic national fee was thirty months from the priority date, i.e., 11 August 2006.

On 11 August 2006, applicants' filed a Transmittal Letter for entry into the national stage in the United States accompanied by, among other materials, payment of the basic national fee and a translation of the international application into English.

On 22 March 2007, the United States Designated/Elected Office (DO/EO/US) mailed a Notification Of Missing Requirement (Form PCT/DO/EO/905) indicating that an oath or declaration in compliance with 37 CFR 1.497 was required.

On 11 October 2007, applicants filed a response to the Notification Of Missing Requirements (with required five-month extension fee). The response included a partially executed declaration and the petition under 37 CFR 1.47(a) considered herein. The petition seeks acceptance of the application without the signature of co-inventor Gerard VANACKER, whom applicants assert has refused to execute the application.

DISCUSSION

A grantable petition under 37 CFR 1.47(a) must be accompanied by: (1) the fee under 37 CFR 1.17; (2) a statement of the last known address of the non-signing inventor; (3) an oath or declaration executed by the other inventors on behalf of themselves and the non-signing inventor; and (4) factual proof that the inventor refuses to execute the application or cannot be reached after diligent effort.

Applicants here have provided the required petition fee, and the petition states the last known address of the non-signing inventor. Items (1) and (2) are therefore satisfied.

Regarding item (3), section 409.03(a) of the Manual of Patent Examining Practice (MPEP) states that:

An oath or declaration signed by all the available joint inventors with the signature block of the nonsigning inventor(s) left blank may be treated as having been signed by all the joint inventors on behalf of the nonsigning inventor(s), unless otherwise indicated.

Here, applicants have filed a declaration executed by the inventors of record in the international application and including an unsigned signature block for the non-signing inventor, Gerard VANACKER. This declaration can be accepted as having been executed by the signing inventor on his own behalf and on behalf of the non-signing inventor. Item (3) is therefore satisfied.

Regarding item (4), MPEP section 409.03(d) states that, before it can be concluded that an inventor has refused to execute the application papers, “[a] copy of the application papers should be sent to the last known address of the nonsigning inventor, or, if the nonsigning inventor is represented by counsel, to the address of the nonsigning inventor's attorney.” The MPEP also states the following:

Where a refusal of the inventor to sign the application papers is alleged, the circumstances of the presentation of the application papers and of the refusal must be specified in a statement of facts by the person who presented the inventor with the application papers and/or to whom the refusal was made. Statements by a party not present when an oral refusal is made will not be accepted.

Here, as evidence of the inventor's refusal to execute the declaration, applicants have provided copies of letters sent to a person identified herein as the non-signing inventor's “representative” and/or “consultant;” these letters request the inventor's signature for the present application, and they were purportedly accompanied by a copy of the complete application, as required. However, applicants have not provided a firsthand statement from the person(s) who sent the relevant correspondence to the non-signing inventor, as required by the MPEP to confirm the correspondence and the enclosures included therein. In addition, while the MPEP states that it is appropriate to send the request for signature to the non-signing inventor's attorney if the inventor is represented by counsel, the record here does not include a statement from a

person with firsthand knowledge confirming that the person to whom the correspondence was directed is currently the attorney for the non-signing inventor. Accordingly, it can not be determined from the present record if the requests for signature herein were directed to the proper party.

Applicant must provide a statement from the person who forwarded the provided correspondence to the inventor's representative confirming the contents of such correspondence and confirming that the person to whom such correspondence was directed is the attorney for the non-signing inventor. Until such supplemental materials are provided, item (4) is not satisfied.

CONCLUSION

Applicants' petition under 37 CFR 1.47(a) is **DISMISSED** without prejudice.

If reconsideration on the merits of the petition is desired, a proper response must be filed within **TWO (2) MONTHS** of the mail date of the present decision. Any request for reconsideration should include a cover letter entitled "Renewed Petition Under 37 CFR 1.47(a)" and must include the additional materials required to satisfy item (4) of a grantable petition, as discussed above and in the MPEP. No additional petition fee is required.

Failure to file a proper response will result in abandonment of the application. Extensions of time are available under 37 CFR 1.136(a)

Please direct further correspondence with respect to this matter to Mail Stop PCT, Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.



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